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Human Development Association and New York's Health and Human Service Union, 1199/Service Employees International Union (formerly known as District 1199, National Union of Hospital and Health Care Employees, R.W.D.S.U., AFL-CIO) and District 6, International Union of Industrial Service, Transport and Health Employees (formerly known as Local 6, International Federation of Health Professionals, International Longshoremen's Association, AFL-CIO). Case 29-CA-9367

June 24, 2005

ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This compliance proceeding is before the Board on the General Counsel's Motion for Summary Judgment and the Respondent's Cross-Motion for Summary Judgment. The General Counsel seeks summary judgment on the basis that the Respondent's answer to the compliance specification is deficient under Section 102.56(b) of the Board's Rules, because the answer, as amended, fails to plead specifically as to information within the Respondent's knowledge. The Respondent contends, inter alia, that the Respondent lacks the records necessary to prepare a more specific answer, because the Respondent submitted those records to the Region. As explained below, we shall allow the Respondent an opportunity to review the records and amend its answer.

On May 22, 1989, the National Labor Relations Board issued a Decision and Order concluding that the Respondent had violated Section 8(a)(2), (3), and (1) of the Act by recognizing Local 6, International Federation of Health Professionals, International Longshoremen's Association, AFL-CIO (Local 6) as the exclusive collective-bargaining representative of a unit of the Respondent's home attendants when Local 6 did not represent a valid majority of the unit and by executing and enforcing union-security and dues-deduction clauses in a collective-bargaining agreement with Local 6.¹ The Board ordered the Respondent to reimburse unit employees, with interest, for moneys withheld from them on or after the effective date of the collective-bargaining agreement

¹ 293 NLRB 1228 (1989). Local 6 is now known as District 6, International Union of Industrial Service, Transport and Health Employees.

for initiation fees, dues, or other obligations of membership in Local 6.² The United States Court of Appeals for the District of Columbia Circuit enforced the Board's Order in full.³

On June 30, 2004, the Regional Director for Region 29 issued a compliance specification and notice of hearing, setting forth the Region's position as to the amount of reimbursement due each of the 3082 claimants. On August 24, 2004, the Respondent filed an answer admitting certain allegations in the specification and generally denying other allegations, including the amounts due. On March 29, 2005, after notice from the General Counsel that the answer was deficient, the Respondent filed an amended answer claiming insufficient information to admit or deny the reimbursement amounts in the specification.

On April 7, 2005, the General Counsel notified the Respondent's attorney that the amended answer was still deficient. According to the General Counsel, the Respondent's attorney replied "that [the] Respondent was unable to be specific because it lacked the documents necessary to formulate its computations and that, in fact, the Region had the documents." The General Counsel contends, however, that the Respondent never requested access to the records.

On April 20, 2005, the General Counsel filed his Motion for Summary Judgment, contending that the Respondent's answer, as amended, fails to comply with Section 102.56(b). On April 25, 2005, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted.

On May 9, 2005, the Respondent filed an Affidavit in Opposition to General Counsel's Motion for Summary Judgment and in Support of Respondent's Cross-Motion for Summary Judgment. The General Counsel and the Respondent each filed a reply brief. The Respondent contends, inter alia, that the Respondent lacks the records necessary to prepare a more specific answer, because the Respondent submitted those records to the Region.⁴

We find, under the circumstances, that the Respondent is entitled to an opportunity to review the records it has provided to the Region and to file, with the Board's Ex-

² Id. at 1229.

³ 937 F.2d 657 (1991), cert. denied 503 U.S. 950 (1992).

⁴ The Respondent also contends that the General Counsel's Motion for Summary Judgment should be denied, and the Respondent's motion granted, because the Respondent is "essentially bereft of assets" and because the Region did not issue the compliance specification until 13 years after court enforcement of the Board's Order in the unfair labor practice case. Because we find it appropriate to allow the Respondent to amend its answer, we need not address those contentions or resolve the summary judgment motions here.

ecutive Secretary in Washington, D.C., a second amended answer that complies with the requirements of Section 102.56(b) of the Board's Rules. Accordingly, we shall order the General Counsel to make the relevant records available to the Respondent within 14 days of the date of this Order. Within 21 days after the last day of that 14-day period, the Respondent may file a second amended answer to the specification.⁵ After the expiration of the Respondent's time to amend its answer, we will consider the pending motions for summary judgment in light of the Respondent's second amended answer, if such an answer has been filed. In the meantime, consistent with the Board's longstanding policy of "encourag[ing] compromises and settlements," *Wallace Corp. v. NLRB*, 323 U.S. 248, 253-254 (1944), we strongly urge the parties to explore voluntary resolution of this dispute.⁶

⁵ If the Respondent needs additional time to file its second amended answer, the Respondent may seek an extension of time. Because the case remains before the Board, the second amended answer and any request for an extension of time should be directed to the Board through its Executive Secretary's Office. Any request for an extension of time should comply with Sec. 102.111(b) and (c) of the Board's Rules.

⁶ However, settlement negotiations shall not operate to stay the effectiveness of this Order. Therefore, if the parties are engaged in meaningful settlement discussions, they should promptly notify the Board of

IT IS THEREFORE ORDERED that within 14 days from the date of this Order, the General Counsel shall make available to the Respondent for inspection and copying all records obtained from the Respondent that are relevant to the allegations in the specification.

IT IS FURTHER ORDERED that within 21 days after the last day of the 14-day period described above, the Respondent may file a second amended answer to the compliance specification. The contents of any such answer shall be subject to the requirements of Section 102.56(b) of the Board's Rules.

Dated, Washington, D.C. June 24, 2005

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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this fact in order that the Board may, on request, extend the time for the filing of the Respondent's second amended answer.